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No. 946

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

ROLAND RYAN, GINO POLLASTRINI, and SAM BRUNO,

Petitioners,

vs.

DOMINIC ABATA, individually, and as President of Democratic Union Organizing Committee, and DEMOCRATIC UNION ORGANIZING COMMITTEE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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DOMINIC ABATA, individually, and as President of Democratic Union Organizing Committee, and DEMOCRATIC UNION ORGANIZING COMMITTEE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioners, Roland Ryan, Gino Pollastrini and Sam Bruno, pray that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURT BELOW.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on November 28, 1962, and is not reported, but appears in the printed Appendix filed with, and certified

by, the Clerk of the United States Court of Appeals as a part of this record, and transmitted herewith.

The order of the United States Court of Appeals for the Seventh Circuit, affirming said judgment, was filed on the 6th day of March, 1963. That order is not yet reported, but is set forth in the Appendix hereto, and in the certified copy of the record.

JURISDICTION.

The order of the United States Court of Appeals for the Seventh Circuit, dismissing the appeal from an order of the United States District Court for the Northern District of Illinois, Eastern Division, was filed on the 6th day of March, 1963. This petition is filed within ninety days of the order dismissing the appeal in the United States Court of Appeals for the Seventh Circuit. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

1. May an evil, recognized by Congress and specifically sought to be eliminated by legislation [providing for injunctive remedies, as a mode for "appropriate relief"], be allowed to continue unbridled, because relief by injunction has been stricken, and the victims relegated to the hope of some future money damages? Does not such an order clearly constitute a final and irreparable effect upon the rights of the victim-plaintiffs?

2. Where the Congress enacts a Bill of Rights for individuals of a class to protect them from being victimized by those purporting to act in their interests—such victimizing being an existing evil recognized by the Congress—should not a charge of infringement upon those rights be met at the threshhold, or—is it proper, as the

District Court did, to forever deny injunctive relief without hearing and prior to trial?

3. Where compensatory damages are patently difficult, if not impossible, of satisfactory proof (so patently difficult that the defendants moved the Court of Appeals for dismissal of the cause of action, on the ground that the remaining relief asked was impossible of proof), does not the striking of the prayers for equitable relief involve an issue fundamental to the future conduct of the case?

4. Where a recently enacted federal statute provides for any "appropriate relief," and sets forth specifically that injunction should be included in "appropriate relief," and no other type of "appropriate relief" is specifically included in the Act, is not the striking of the prayer which seeks injunction a revision and modification of the Act of Congress?

5. Where a statute provides for "appropriate relief," expressly articulating inclusion of injunction as an available remedy, is not the striking from the prayer for relief that portion seeking injunction an appealable order, under Section 1292(a)(1) of Title 28, U.S.C.?

6. Is the striking from the prayer for relief that portion which seeks an injunction an effective denial of an injunction, within the scope of Title 28, U.S.C., Section 1292(a)(1)?

7. Even when the District Court refuses a certification under Rule 54(b), does not the statute (28 U.S.C. 1292(a)(1)), granting entitlement to appeal from denial of injunctive relief, govern when a prayer for such relief has been ordered stricken?

STATUTES INVOLVED.

TITLE I

BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

BILL OF RIGHTS

Sec. 101. (a)(1) Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of Speech and Assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

CIVIL ENFORCEMENT

Sec. 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

STATEMENT OF THE CASE.

This action was commenced under Title I of the Labor-Management Reporting and Disclosure Act of 1959 by the filing of a complaint on April 12, 1962 (App. 16-27) and alleged class actions and conspiracies among union officers and others, to deprive union members of rights and property under law and under union by-laws. It alleged a violation by the defendants of the rights insured to plaintiffs, and members of their class, by Title 29, U.S.C., Section 411(a)(1), to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings. It further alleged a violation of their rights, insured by Title 29, U.S.C., Section 411(a)(2), to express any views, arguments and opinions upon any business properly before the meetings of the labor organization.

It sought to enjoin the defendants and their agents and associates from further violations of law, and from engaging in furtherance of the conspiracies designed to deprive the plaintiffs and others of their class of their rights, reposed in them by statute under said Title I. It also sought to enjoin the defendants, their agents and associates from carrying into effect any agreement or agreements made in violation of said Bill of Rights, and a declaration that any agreements so made were a nullity and not in anyway binding upon the plaintiffs, and members of their class similarly situated. It further sought to restore the plaintiffs and members of their class, similarly situated, to the *status quo* as it existed prior to the execution of any such agreement, and prayed for a temporary injunction, enjoining defendants, during the pendency of the action, from carrying into effect all or any part of the agreements so made, and for a permanent injunction thereafter.

On April 12, 1962, the date of the filing of the complaint, the Court ordered the motion for preliminary injunction continued to April 16, 1962, on which date the defendant, Dominic Abata, asked for and received leave to file an answer and motion to dismiss. The plaintiffs' motion for preliminary injunction was continued to April 23, 1962, to allow the said defendant to file his motion to dismiss, attacking the jurisdiction of the District Court. On April 23, 1962 the matter was again continued to the following day for decision on the question of jurisdiction, and, on the following day, the District Court assumed jurisdiction over the subject matter of the complaint, and subpoenas issued to the witnesses to appear on April 27, 1962 for hearing on the preliminary injunction. On April 27, 1962 the witnesses came before the Court, were sworn, and all subpoenas were continued for hearing on the preliminary injunction to May 23, 1962. Thereafter, the witnesses were directed to reappear from date to date on the Court's own motion. On May 31, 1962, they were directed to reappear on June 11, 1962; on June 11, 1962, they were ordered to reappear when the case was reached. From June 11, 1962, for over a month, until July 16, 1962, when the plaintiffs petitioned for a stay, pending a determination on the merits of their motion for a preliminary injunction, so that the cause of action would not be mooted by the enforcement of the allegedly unlawful agreements. The petition for stay was denied on the same date. Three days later, the cause was set for trial on September 12, 1962, on which date it was again continued until November 5, 1962, on which date it was again continued until November 19, 1962, and again, to November 26, 1962, and again, to November 28, 1962. All of these continuances were on the Court's motion, the witnesses were in court, ready to proceed, and subpoenas were complied with (App. 2-13).

On November 28, 1962, without the hearing so many times continued, the Court entered an order, striking from the complaint of the prayer for relief paragraphs (a), the prayer for injunction, paragraph (b), the prayer for declaratory judgment that the alleged unlawful agreements were a nullity, and paragraph (c), a prayer for restoration of the plaintiffs, and members of their class, to the *status quo*, as it existed, prior to the entering into the purported labor agreements (App. 22).

On December 19, 1962 the District Court denied the plaintiffs' motion for entry of a partial final judgment, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure (App. 14). Two days later, on December 21, 1962, the plaintiffs filed their notice of appeal to the United States Court of Appeals for the Seventh Circuit (App. 42).

Thereafter, on February 1, 1963, the defendants moved to dismiss the appeal, on the ground that the order entered on November 28, 1962 was not an appealable order, and further moved to dismiss the cause of action, as not constituting a justiciable controversy cognizable under federal law. An answer to the motion and a reply were duly filed in accordance with the order of the Court of Appeals for the Seventh Circuit. On March 6, 1963 the United States Court of Appeals for the Seventh Circuit dismissed the appeal, on the ground that the order of November 28, 1962 did not constitute a final order nor an order refusing an injunction, within the scope of Title 28, U.S.C., Section 1292(a)(1), and was, therefore, not an appealable order.

The error relied upon relates to the dismissal of the appeal by the United States Court of Appeals for the Seventh Circuit, from the order of the United States District Court for the Northern Division of Illinois, striking the prayer for injunction from the complaint.

STATEMENT OF FACTS.

It was alleged in the complaint that all plaintiffs were citizens and residents of the United States, and that the defendants remaining in this lawsuit are citizens of the State of Illinois, that the general office and principal place of business of the defendant, Democratic Union Organizing Committee, is in the City of Chicago and State of Illinois.[1] The plaintiffs, under the complaint, as members of the Democratic Union Organizing Committee, on behalf of themselves and members of their class, invoked their rights under law (Title I of the Labor-Management Reporting and Disclosure Act of 1959) and the by-laws of the union, to be heard, study, discuss and vote on all business matters coming before the meetings of the Democratic Union Organizing Committee (DUOC), and particularly under paragraphs XIII and XIV of the by-laws, which provide:

> "Bargaining demands shall be formulated at a general membership meeting by the members in a democratic manner."

and

> "Every contract shall require ratification by majority vote of those voting, by secret ballot at a duly called and noticed regular or special membership meeting." (Ex. A, App. 19-26)

It is alleged in the complaint that the defendants Abata and all the other officers of DUOC, secretly and

[1] The Yellow Cab Company and Checker Taxi Company, originally named as defendants, were dismissed for want of jurisdiction over them, under Labor-Management Reporting and Disclosure Act of 1959 (App. 11).

without lawful sanction from the plaintiffs and the other members of DUOC affected thereby, negotiated a secret contract with the employers Yellow Cab and Checker Taxi Companies, the terms of which, including working conditions, hours of employ, and wages were deliberately withheld from the membership of DUOC; that the only source of information as to such terms were those which the defendant Abata chose to release through local newspapers, among which disclosures were that the duration of the contract was three years. It is further alleged that the defendants made a "Sweetheart Contract" which will take from the plaintiffs and all employees affected thereby a minimum amount of one and one quarter million dollars, which monies will be controlled and used for the benefits of defendant Abata and the officers of DUOC. (App. 19-20)

It is further alleged that, notwithstanding the provisions of the by-laws adverted to hereinbefore, the defendant Abata and the other officers did not permit the membership to formulate contract bargaining demands at a membership meeting and that, on or about April 6, 1962, said defendant, together with his officers, concluded an "understanding" of the terms and conditions of the agreement with Yellow Cab and Checker Taxi Companies; that said defendant Abata thereafter called a meeting of DUOC without adequate notice to the membership and "steamrolled" a ratification of the agreement, the terms of which said Abata contumaceously refused to disclose to the membership present, when called upon to do so from the floor by members of DUOC. (App. 20)

It is further alleged that defendant Abata used police officers of the City of Chicago as a psychological deterrent to any member of DUOC to ask proper questions concerning the economic impact upon such members of

the agreement heretofore discussed. It is further alleged in the complaint that Abata and his officers are engaged in a scheme and campaign to force employees of the Yellow and Checker Companies into DUOC by virtue of the secret agreement, and that the defendant Abata, accompanied by police officers of the City of Chicago, openly is engaged in a form of implied legal authority to force employees into his control. It is alleged that the purpose of these acts is to secure to the defendant Abata control and domination of the said one and one-quarter million dollars. (App. 21).

Plaintiffs further allege the need for urgency in that the enforcement of the agreement will result in the incalculable damage to said plaintiffs and persons in their class; that they have no adequate remedy of law, and that the acts of the defendants constitute a gross fraud upon them and upon members of their class. (App. 21)

Their prayer for relief, including the portions hereinbefore set forth, to wit, the injunction, the declaratory judgment prayer, and the prayer for restoration to *status quo,* included a demand for compensatory and exemplary damages and for costs, disbursements and for legal fees. (App. 22-23)

As the basis for striking the prayer for injunction, declaratory judgment and restoration to *status quo*, the District Court held, under the provisions of the Labor-Management Reporting and Disclosure Act of 1959, it did not have jurisdiction to grant such relief, and that the plaintiffs were confined to such money damages as they could prove.

Defendants moved to dismiss the appeal taken by plaintiffs from this order, on the ground that certification under Rule 54(b) of the Federal Rules of Civil Procedure

had been denied, and the order was not appealable under Title 28, U. S. C., Section 1292(a)(1).

This petition prays for review of the order of the United States Court of Appeals for the Seventh Circuit, granting defendants' motion to dismiss.

REASONS FOR GRANTING THE WRIT.

This Court should exercise its jurisdiction in this case, for the following reasons:

I. The Court of Appeals for the Seventh Circuit *continues* in this case to follow its own earlier decision in *Packard Motor Car Co.* v. *Gem Manufacturing Co.*, 7 Cir., 187 F. 2d 65 (certiorari granted, 341 U.S. 930; dismissed per stipulation, 342 U.S. 802), dismissing an appeal from an order denying an interlocutory injunction in a multiple claims action, on the ground that Rule 54(b) applied and, absent a certificate by the district court, the order was non-appealable; and the Third Circuit, in *Hook* v. *Hook & Ackerman, Inc.*, 213 F. 2d 123, and 233 F. 2d 180, 182, fully and expressly cognizant of the *Packard* decision,[2] felt "constrained not to follow it." Thus, it is unlikely the conflict will resolve itself. This Court should grant certiorari to resolve the express direct conflict of circuits, and bring about uniformity of decisions on an important question of appellate jurisdiction.

II. To eliminate despotism in union officials, and to protect the exploited and oppressed union member, the Congress has legislated a Bill of Rights to insure greater integrity in the administration and management of union

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[2] Other circuits holding contrary to the Seventh Circuit: **George P. Converse & Co. v. Polaroid Corp.**, 1 Cir., 242 F. 2d 116, 119; **Pang-Tsu Mow v. Republic of China**, CADC, 201 F. 2d 195, 197-198.

affairs. The effect of the orders of the courts below is to sanction a continuation of existing abuses of those rights, to emasculate the legislation and to frustrate its purpose. This Court should exercise its supervisory power over the courts of the United States, to the end that the laws be effectively administered and enforced.

III. Title I of the Labor-Management Reporting and Disclosure Act of 1959 applies to millions of organized laborers. Effective enforcement by the courts of the rights *guaranteed* thereunder, upon complaint made, is a matter of general public importance.

I.

The District Court assumed jurisdiction over the subject matter of the complaint filed herein, under Title I of the Labor-Management Reporting and Disclosure Act of 1959, and filed a memorandum opinion supporting his assumption of jurisdiction (App. 3, 33-38). Subsequently, the United States Court of Appeals for the Seventh Circuit impliedly found no insurmountable obstacle to the maintenance of the action, as urged upon it by the defendants (App. in CA 7, p. 17a). The District Court, on motion of the defendants, ordered the prayers for equitable relief, including injunction, stricken from the complaint, on the ground that it had no jurisdiction to grant such relief. (App. 41-42) The United States Court of Appeals for the Seventh Circuit, on March 6th, 1963, found the order of the Court, striking the prayers for equitable relief, including injunction, neither a final order nor an order refusing injunction within the scope of Title 28, U.S.C. 1292(a)(1), and therefore, not an appealable order. (App. in CA 7, p. 19a)

It is the respectful submission of these petitioners that there can be no more certain refusal of an injunction

than the one entered here. The District Court found it had jurisdiction over the subject matter of the lawsuit, under Title I of the Labor-Management Reporting and Disclosure Act of 1959, but, according to the import of its order, whatever, and however strong, the proof in support of the allegations of that complaint, it would not and could not issue an injunction. This is not the case of injunctive relief being delayed because of a contested issue of fact but, rather, assuming the facts alleged to be true, injunctive relief was denied and refused. The only impediment to complete finality of the lawsuit was the presence of the additional claims for compensatory and exemplary damage. It is the submission of these petitioners that the presence of the undisposed of claims for money damages in no way affects the appealability of the order finally denying and refusing injunctive relief.

To our knowledge, only the Seventh Circuit holds the appealability of a final order denying or refusing injunctive relief to be affected by the presence of multiple claims in the action. *Packard Motor Car Co.* v. *Gem Manufacturing Co.*, 187 F. 2d 65, cert. granted, 341 U.S. 930, dismissed by stipulation, 342 U.S. 802.

In *Hook* v. *Hook & Ackerman, Inc.*, 213 F. 2d 128, the Third Circuit, in finding the issuance of a permanent injunction in an action in which multiple claims for relief had been pleaded, an appealable interlocutory order, it stated:

> "• • • In this connection we have noted the decision of the Court of Appeals for the Seventh Circuit in *Packard Motor Car Co.* v. *Gem Manufacturing Co.*, 1950, 187 F. 2d 65, but with all deference to the Court of Appeals for the Seventh Circuit we feel constrained not to follow it." (P. 129)

Later, in the case under the same title, the Third Circuit restated its conviction that such an order was appealable, 233 F. 2d 180, 182.

In *Pang-Tsu Mow* v. *Republic of China*, 201 F. 2d 195, the Court of Appeals for the District of Columbia, holding in accordance with the Third Circuit, recognized that its decision was contrary to the decision in the *Packard* case.

The First Circuit, too, recognized its holding on the same question in *George P. Converse & Co.* v. *Polaroid Corp.*, 242 F. 2d 116, to be contrary to the holding of the Seventh Circuit in *Packard*.

Though the decision of the Seventh Circuit in the motion to dismiss does not specifically set forth that Rule 54(b) of the Federal Rules of Civil Procedure applied to the denial of an interlocutory injunction in a multiple claims action, that was the ground urged upon them by the defendants, and no other ground or reasoning is feasible. (App. in CA 7, pp. 2a, 8a-10a) It therefore appears that the conflict between the Seventh Circuit, on the one hand, and the First, Third and District of Columbia Circuits, on the other hand, will not likely resolve itself.

II.

In enacting Title I of the Labor-Management Reporting and Disclosure Act of 1959, the Congress found the evils to be corrected existed in a number of instances of breach of trust, corruption, disregard of the rights of the individual employees and other failures to observe high standards of responsibility and ethical conduct. It found a need for further and supplementary legislation to afford necessary protection of the rights and interests of employees and the public generally, as they relate to the

activities of labor organizations, employers, labor relations consultants and their officers and representatives. Title 29, U.S.C., 401(b). The purpose of the Act was to afford sanctuary to the exploited and the oppressed, to protect union members, to prescribe minimum standards of democratic process and conduct for the administration of internal union affairs, to foreclose the stifling of expression of opposition to the "union bosses" and to free the rank and file from union domination. *Tomko* v. *Hilbert*, 3rd Cir., 286 F. 2d 625, 627-628.

It is alleged in this complaint that "union bosses", in the satisfaction of their own self-interest, and in collusion with the employers, clandestinely agreed to a "sweetheart" contract, and, then, through coercion and intimidation, obtained membership approval of the "sweetheart" contract, the terms of which were kept secret from the union members bound by it for a term of three years.

The order of the District Court, striking the prayers for equitable relief, including injunction, relegates these offended members to whatever damages they may be able to prove at the conclusion of three years. It was not the purpose of the Congress, in enacting the Bill of Rights, and giving to the courts the power to relieve oppression by whatever recourse is appropriate, that that power is interpreted as a frustration of the courts to intervene, in the face of an evil perpetuated by legal fiat in defiance of the strictures of a congressional enactment. This Court should exercise its supervisory power over the courts of the United States, to the end that the laws purposefully enacted to eradicate a specific evil be administered and enforced.

III.

Title I of the Labor-Management Reporting and Disclosure Act of 1959 applies to millions of organized laborers. Effective enforcement by the courts of the rights guaranteed thereunder, on complaint made, is a matter of general public importance. This cause involves construction and enforcement of a relatively new statute. The cause presently before the Court does have a reach "beyond the academic or episodic." *Rice v. Sioux City Cemetery*, 349 U.S. 73, 75.

CONCLUSION.

Wherefore, for the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

JACQUES M. SCHIFFER AND
HOWARD W. MINN,
Attorneys for Petitioners

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Roland Ryan, Gino Pollastrini and SAM BRUNO, Plaintiffs Appellants, vs. Dominic Abata, individually, and as President of Democratic Union Organizing Committee, and Democratic Union Organizing Committee,	Cause No. 14053 — Appeal from the United States District Court for the Northern District of Illinois Eastern Division

MOTION TO DISMISS
(Filed Feb. 1 1963)

Now come the defendants-appellees, Dominic Abata individually and as President of Local 777 Democratic Union Organizing Committee and Local 777 Democratic Union Organizing Committee (hereinafter called "DUOC"), by their attorneys, and move to dismiss the appeal herein or, in the alternative, to dismiss this action, for lack of appropriate jurisdiction:

1. The Appeal Should Be Dismissed Because the Order from Which the Appeal is Taken is an Interlocutory and not a Final Order.

A. The Appeal herein is taken from the trial court's order of November 28, 1962 striking paragraphs A, B and C from the Prayer for Relief of plaintiffs' Complaint (See Notice of Appeal, Record p. 405).

B. Said order is not a "final" order within the provisions of 28 United States Code, Section 1291 but is

merely an interlocutory order. Therefore, there is no authority for this appeal.

C. There has been no certification pursuant to 28 United States Code, Section 1292(b), which would be required to make said order appealable.

D. There has been no finding pursuant to Rule 54(b) of the Federal Rules of Civil Procedure which would be required to make said order an appealable "partial final judgment". Plaintiffs' motion before the trial court for such a finding was denied by the order entered December 19, 1962 (Record, p. 401 & 404).

E. Appellants have not filed any bond in connection with this appeal, although a bond is required by Rule 73(c) of the Federal Rules of Civil Procedure.

II The Appeal and the Cause Should be Dismissed for the Reason that No Claim within the Scope of Title I of the Landrum-Griffin Act has been set forth.

The action should be dismissed in its entirety for want of federal jurisdiction. The Complaint (Record p. 6 et seq.) bases federal jurisdiction on Title I of the Labor-Management Reporting and Disclosure Act of 1959 (290 S.C. §401 et seq., hereinafter called "the Landrum-Griffin Act"). The Complaint, however, fails to allege any conduct by the defendants which constitutes a violation of any of the provisions of that Title.

III The Cause Should be Dismissed because the Complaint is Moot.

A. The Complaint purports to be based upon allegations of conduct by the defendant union which occurred prior to the execution of collective bargaining agreements between defendant union and the employers.

B. The Complaint, however, was filed after the execution of said collective bargaining agreements, between the employer cab companies and the defendant union.

C. In an action based upon Title I of the Landrum-Griffin Act, a federal district court has no jurisdiction over employers or over collective bargaining agreements. The Court below so held in dismissing the Complaint as against the defendant taxicab companies. (See Order dismissing Complaint against defendants Yellow and Checker of November 19, 1962 under Supplement to Record.) Consequently, no judgment or decree herein could affect or disturb collective bargaining agreements, which were in force prior to the filing of the action.

D. Therefore, even if arguendo the conduct of the defendant union which is alleged in the Complaint were deemed improper under Title I, the district court could give only an advisory opinion as to future conduct in negotiating agreements after the present contracts expire.

E. Plaintiffs have not suffered any pecuniary damages by the operation of the collective bargaining agreements.

F. Consequently, the Complaint provides no basis upon which any meaningful relief can be granted, and any issue as to the conduct set forth in the Complaint is moot. The federal courts do not have jurisdiction to decide moot issues or to render advisory opinions or decrees.

G. Therefore, the Complaint should be dismissed in its entirety for lack of federal jurisdiction because the issues are moot.

Wherefore, defendants-appellees move to dismiss either

the appeal or, in the alternative, the entire cause and ask judgment for their costs sustained.

If this Court considers amplification of the points made in this Motion necessary or desirable, defendants-appellees respectfully ask leave to file Suggestions in support of this Motion within such time as this Court shall provide.

/s/ Irving M. Friedman & Arthur Brody
Irving M. Friedman & Arthur Brody
Attorneys for Defendants-Appellees
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Harry D. Strouse, Jr.
Of Counsel

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

• • (Caption—No. 14053) • •

ANSWER TO MOTION TO DISMISS
(Filed Feb 12 1963)

Now come the Plaintiffs-Appellants, Roland Ryan, Gino Pollastrini, Sam Bruno, by their attorne s and, in answer to the motion of the defendants-appellees to dismiss the appeal herein, say:

I. It is admitted that the order from which the appeal is taken is an interlocutory and not a final order, but it is denied that the appeal should be dismissed therefor.

A. Subparagraph A of the Motion to Dismiss is Admitted.

B. It is admitted that the order from which this appeal is taken is an interlocutory order. It is

further stated that the interlocutory order from which this appeal is taken was one refusing injunctive relief, and the authority for this appeal is found in Title 28 U.S.C. 1292 (a)(1). The authority to appeal from the order concerned herein is argued at length under Point II of the brief for the appellants, which said portion of the brief for the appellants is incorporated herein by reference.

C. It is admitted that there has been no certification of the aforesaid order pursuant to 28 U.S. 1292 (b); it is further stated that no such order is required to make appealable orders encompassed within Section 1292 (a)(1), and this appeal is properly before this Court.

D. The allegations of said paragraph D of the Motion to Dismiss are admitted, except it is alleged that no finding pursuant to Rule 54 (d) of the Federal Rules of Civil Procedure is required to make the order herein appealable.

E. These plaintiffs-appellants deny the allegations of said paragraph E and state, on the contrary, that a bond as required by Rule 73 (c) of the Federal Rules of Civil Procedure has been filed with the Clerk of the District Court for the Northern District of Illinois.

II. The plaintiffs-appellants deny the allegations of paragraph II of the Motion to Dismiss. The plaintiffs-appellants admit the jurisdiction of this court to determine on this appeal from the striking of the Prayer for interlocutory injunction and permanent injunction, to consider whether there is any insurmountable obstacle to the maintenance of the action itself.

Deckert v *The Independence Shares Corporation* 311 US 282, 287; *Datliss Coal Company* v *Cox*, 6 Cir 142 F. 2d. 876, 880; *Brotherhood of Locomotive Firemen, etc.* v. *Kenan*, 5 Cir., 87 F. 9d. 651, 653. The plaintiffs-appellants admit that such consideration may be had as an incident to the review sought by the plaintiffs-appellants, and on that account the right to maintain the action has been briefed and argued in the Brief and Arguments submitted on their behalf on this appeal.

III. These plaintiffs-appellants deny the cause which is the subject of this complaint is moot. The plaintiffs-appellants further submit that the matter set forth in paragraph III of the Motion to Dismiss should properly be considered on a review of the order appealed from. This is not the case of an event occurring during the pendency of appeal which would prevent the court from granting effectual relief. The matters set forth in said paragraph III are part of the proceedings pending before the District Court, and in the absence of demonstrating an insurmountable obstacle to the maintenance of the action should await a final order.

A & B The allegations of said paragraphs A & B of the Motion to Dismiss are admitted.

C,D,E The allegations of subparagraphs C. D. E are denied.

F The allegations of subparagraph F are denied. The question here presented is neither a moot issue nor would an opinion or decree entered herein be merely advisory.

G The allegations of subparagraph G are denied.

Wherefore, these plaintiffs-appellants deny this appeal or the cause should be dismissed. Further, said plaintiffs-appellants state that assessable costs on this appeal are governed by statute and demand for judgment therefor, by the defendants-appellants is neither necessary nor appropriate.

Respectfully submitted,

Jacques M. Schiffer and
Howard W. Minn,
Attorneys for Plaintiffs-Appellants
by /s/ Howard W. Minn

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois

Before
Hon. John S. Hastings, Chief Judge

Raymond Ryan, et al., Plaintiffs-Appellants,	)	Appeal from the
	)	United States
No. 14053 vs.	)	District Court
	)	for the Northern
Dominic Abata, etc., et al., Defendants-Appellees.	)	District of
	)	Illinois,
	)	Eastern Division.
	)	

This matter comes before the Court on the motion and affidavit of counsel for defendants-appellees to dismiss the appeal herein or, in the alternative, to dismiss this action for lack of appropriate jurisdiction; and the answer of counsel for plaintiffs-appellants to motion to dismiss.

On consideration whereof, It Is Hereby Ordered that defendants-appellees file a reply to the answer of plain-

tiffs-appellants to motion to dismiss on or before February 19, 1963.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

• • (Caption—No. 14053) • •

REPLY
(Filed Feb 19 1963)

Now come the defendants-appellees by their attorneys, and in reply to the Answer To Motion To Dismiss, say:

1. Defendants-appellees deny that the order appealed from is appealable under Title 28 USC 2292(a)(1), as alleged in paragraph IB of the Answer To Motion To Dismiss.

2. Defendants-appellees deny that the order appealed from is appealable without a certification pursuant to 28 USC §1292(b), and defendants-appellees deny that this appeal is properly before this Court, as alleged in paragraph IC of the Answer To Motion To Dismiss.

3. Defendants-appellees deny that the order appealed from is appealable without a finding pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, as alleged in paragraph ID of the Answer To Motion To Dismiss.

4. There exist insurmountable obstacles to the maintenance of plaintiffs' action. The Complaint clearly reveals that plaintiffs' action is not within Title I of the Landrum Griffin Act and that, in any event, their case is moot.

5. Defendants-appellees submit herewith their Suggestions in support of the foregoing and in support of this Motion To Dismiss.

Wherefore, defendants-appellees move to dismiss the appeal or in the alternative, that the cause be dismissed for lack of appropriate jurisdiction or because the cause is moot.

/s/ Irving M. Friedman and Arthur Brody
Irving M. Friedman and Arthur Brody
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IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

(Caption—No. 14053)

SUGGESTIONS IN SUPPORT OF
MOTION TO DISMISS
(Filed Feb 19 1963)

Now come the defendants-appellees and in support of their Motion To Dismiss the appeal, or in the alternative, to dismiss the action for lack of appropriate jurisdiction or mootness, say:

I. The Appeal Should Be Dismissed Because It Is Taken From A Non-Appealable Interlocutory Order.

The plaintiffs-appellants admit that the order appealed from is not a final order; that it is interlocutory; that it is not appealable under 28 USC 1291; that there has

been no certification of said order pursuant to 28 USC §1292(b); and that there has not been any finding pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. It is clear that plaintiffs-appellants rest their claim of appealability entirely upon the provisions of 28 USC §1292(a)(1).

The order appealed from is not an order refusing an injunction within the meaning of 28 USC §1292(a)(1). Instead, as the record before this Court clearly shows, the order was one which struck a portion of the Complaint in conformity with prior orders from which the plaintiffs-appellants never filed an appeal, and which made mere surplusage of the language of the Complaint which was stricken by the order now being appealed.

a. On July 16, 1962, plaintiffs-appellants' application for injunctive relief was denied and no appeal was taken, (Record pp. 168-200) although in the opinion of July 19, 1962, the court below held that there was no jurisdiction to enjoin the executed collective bargaining agreements between the defendants-appellees and the defendant employers (Yellow and Checker taxicab companies were originally named as defendants in the suit.

b. A second application by the plaintiffs-appellants for injunctive relief was denied by order of the court below on August 10, 1962. No appeal was taken. (Record, pp. 222-284).

c. On November 19, 1962, the court below dismissed the Complaint as against the defendant employers, Checker and Yellow taxicab companies. These employers are the other parties, along with defendant-appellee DUOC, to the collective bargaining contracts which the Complaint sought to enjoin. The court below rule that it was without jurisdiction in an action based upon the

Landrum-Griffin Act "to determine any question concerning the validity or invalidity of collective bargaining agreements." (Supplement to Record forwarded by District Court on February 4, 1963, following Item 91 of original record.) The plaintiffs-appellants never appealed from the said order.

d. It is well-settled that the courts are without power to enjoin the enforcement of an agreement when all of the parties to the agreement are not before the court, since there is then absent an indispensable party. *Shields v. Barrow*, 17 How. 130, 139, 15 L. Ed. 158; *Central R. R. of New Jersey* v. *Mills*, 113 US 249; *State of California* v. *Southern Pac. Co.*, 157 US 229; *Balter* v. *Ickes*, 89 F. 2d 856, certiorari denied 301 US 709; *Ward* v. *Deavers*, 203 F. 2d 72; *Egyptian Nocacalite Co.* v. *Stevenson*, 8 F. 2d 576; *Carroll* v. *N. Y. Life Ins. Co.*, 94 F. 2d 333. Thus, aside from any other considerations, after the employers had been dismissed from the suit the court below no longer had power to enjoin the collective bargaining agreements. Even were plaintiffs to prevail in this appeal and have the stricken portions of their Complaint restored, the relief therein prayed would still be beyond the Court's power because indispensable parties are absent.

e. It follows that the effect of the order appealed from is not the denial of injunctive relief. Such relief had been expressly refused by the orders of July 16, 1962 and August 10, 1962 and had been effectively put beyond the power of the court by the order of November 19, 1962. Those earlier orders had rendered the prayers for equitable relief in the Complaint mere surplusage. Thus, the order which struck that that surplusage—the order here appealed from—was a mere formality which brought the Complaint, as a pleading, in line with prior,

unappealed orders subject to leave to amend. An order of that nature is not appealable under §1292(a)(1) even where in its terms it purports to "grant or refuse" injunctive relief, *English* v. *Cunningham* (C.A.D.C. 1960) 282 F. 2d 841; *Highway Engineering Co.* v. *Hillsborough County*, 5 Cir., 67 F. 2d 439 (1933).

II. The Appeal Should Be Dismissed Because There Is No Jurisdiction Of The Action Under Title I of The Landrum-Griffin Act.

Although the Complaint attempts to imply other sources of jurisdiction, it is clear that the sole basis actually relied upon by the plaintiffs is Title I of the Landrum-Griffin Act. The Complaint alleges that the plaintiffs-appellants and the defendants-appellees are all residents and citizens of Illinois, thus ruling out diversity jurisdiction. Title II of the Act deals only with the filing of reports with the Secretary of Labor; it is enforceable in a civil suit only by the Secretary of Labor (§210). Section 603 of the Act, being a savings provision of remedies, and Section 10, which is a criminal statute, are both inapplicable. Thus, of the various sources of federal jurisdiction cited by plaintiffs-appellants, only Title I remains.

A careful analysis of the allegations of the Complaint, however, shows that no acts are alleged which actually set forth a violation of Title I. The allegations of violation of the union by-laws "which, in law, constitute a contract" (Complaint, paragraphs 8, 12, 13) do not fall within Title I of the Act, but at most set forth a cause of action for breach of contract, for which, clearly, diversity jurisdiction is essential. *Strauss* v. *I.B.T.*, 179 F.Supp. 297. Title I does not authorize a suit for enforcement of union by-laws. As stated in *Horn* v. *Street Railway Employees*, 194 F. Supp. 560, 48 LRRM 2257,

"Congress did not intend this section to be a 'catch-all' provision for dissatisfied union members." The conclusionary allegations of paragraphs 9, 10, 11, 13, 14 and 15 regarding so-called "sweetheart" contracts, or "secret" contracts, raise no matter within the purview of Title I, which makes no reference of any kind to the manner in which labor organizations negotiate or ratify or enforce their collective bargaining contracts. *Horn* v. *Street Railway Employees*, 194 F. Supp. 560. The remedy which the plaintiffs-appellants seek is to prevent the enforcement of the existing contracts between the employers and the IBEW. But Title I of Landrum-Griffin does not deal with collective bargaining agreements. Suits against employers are not authorized under the statute. *Rinker* v. *Local 24, Lithographers*, 201 F. Supp. 204. Matters arising out of the relationship between the employers and the union are for the Labor Board to determine, under the Taft-Hartley Act, and do not fall within the purview of Title I of Landrum-Griffin. *Rinker* v. *Local 24, Lithographers*, *supra*. *Beauchamp* v. *Weeks*, (S. D. Cal. 1961) 48 LRRM 3048, 43 L. C. paragraph 17, 196; *Allen* v. *Armored Car Chauffeurs*, 185 F. Supp. 492, where the Court said: "Nowhere in Title I is there any mention whatever of a collective bargaining agreement, or of a Union member's derivative rights thereunder, save in Section 104. Section 104 merely gives the Union member the right to receive from his Union a copy of the collective bargaining agreement . . .": *Pran* v. *DeLuca*, 194 F. Supp. 853. As the courts recognize, the field of collective bargaining agreements was dealt with by Congress in the separate Labor Management Relations Act, with the various protections, safeguards and remedies therein contained as part of the Congressional scheme. Thus, it is clear that the grayamen of the Complaint and the essential relief sought, are not within the

purview of Title I of Landrum-Griffin, and no jurisdiction is conferred on the district court over such matters. Accordingly, even if the order below which is the subject of this appeal were to be reversed, there would nevertheless be no jurisdiction in the district court.

It is significant that the named plaintiffs, Ryan, Bruno, and Pollastrini, do not allege violation of their individual rights; they do not say that they themselves were deprived of any rights under Landrum-Griffin. Instead, they attempt to by-pass the language of Section 102 of this Act, which refers to "any person whose rights . . . have been infringed . . ." (underscoring added) by the artifice of a so-called "class action" despite the clear implication of that language that a class action is not authorized, *Mamula* v. *United Steelworkers* (C.A. 3, 1962) 304 F. 2d 108, 50 LRRM 2354. In any event, dissident members of a labor union may not be deemed a "class" within Rule 23 of the Federal Rules of Civil Procedure, *Giordano* v. *RCA*, 183 F. 2d 558. The fact that plaintiffs do not alleges violations of their individual rights is therefore an additional jurisdictional defect.

III. The Appeal And The Suit Should Be Dismissed Because The Cause Is Moot.

a. Since The Suit Seeks To Enjoin Or Interfere With A Collective Bargaining Agreement, There Is No Jurisdiction In The Court Below.

The Complaint bases jurisdiction on Title I of Landrum-Griffin. The gravamen of the Complaint involves essentially the collective bargaining agreements between the defendant-appellee union, DUOC, and the two taxicab companies. The relief sought is a decree to enjoin or to cancel these labor contracts. The Landrum-Griffin Act confers no such jurisdiction upon the District Court.

The defendant-appellee, DUOC, was certified by the National Labor Relations Board as the exclusive bargaining agent of all employees of the two taxicab companies in 1961, under the provisions of the National Labor Relations Act, as amended (Taft-Hartley). Taft-Hartley creates, defines, and regulates the rights and duties of employers and unions with respect to collective bargaining, and the sole, primary jurisdiction over such matters is imposed exclusively in the National Labor Relations Board. Jurisdiction of the federal courts with respect to collective bargaining agreements is confined to suits to enforce such contracts under 301 of the Taft-Hartley Act. The Landrum-Griffin Act, particularly Title I on which this suit is purportedly based, clearly is confined to rights of members internally within their unions; it has nothing to do with collective bargaining agreements. "Nowhere in Title I is there any mention whatever of a collective bargaining agreement, or of a Union member's derivative rights thereunder, save in Section 104. Section 104 merely gives the union member the right to receive from his union a copy of the collective bargaining agreement . . ." *Allen* v. *Armored Car Chauffeurs*, 185 F. Supp. 392, 45 LRRM 3067, 3068-3069; *Horn* v. *Street Railway Employees*, 194 F. Supp. 560, where the court in a remarkably similar action found no jurisdiction under Title I of the Landrum-Griffin Act and dismissed the suit. In *Rinker* v. *Local 24, Lithographers*, 201 F. Supp. 204, the court held that Title I did not authorize suits against employers, and that matters arising out of the employer-union relationship are solely under the purview of the Taft-Hartley Act. See also, *Pastrana* v. *Folding Box Workers*, (S.D.N.Y. 1962) 52 LRRM 2145.

Section 603(b) of Landrum-Griffin expressly provides that nothing under Titles I through VI of that Act shall

affect any rights or obligations arising under the National Labor Relations Act as amended. Throughout the legislative history of Landrum-Griffin, through various versions of the bill, it is abundantly clear that Congress intended to preserve existing rights and obligations under the National Labor Relations Act, as amended. *Legislative History Of The Labor-Management Reporting and Disclosure Act of 1959*, Government Printing Office, 1959, pp. 74, 108, 388, 449, 573-574, 673, 743, 806, 922, 953, 963, 1262, 1521-1522, 1854-1855; at page 963, the Senate Committee Analysis of the bill explains that Titles I, II, III, IV, V and VI of Landrum-Griffin "are not to be construed . . . as impairing or otherwise affecting rights under the National Labor Relations Act, as amended." Clearly, there is no jurisdiction in the district court under Title I of Landrum-Griffin to entertain this suit which attacks an existing collective bargaining agreement. In view of the lack of underlying jurisdiction, the appeal is moot and the suit should be dismissed.

b. Since The Complaint Has Been Dismissed Against The Employer-Parties To The Contract The Below Appeal Is Moot, The Employers Being Indispensable Parties.

As noted above, no appeal was taken by the plaintiffs-appellants from the order below which dismissed the Complaint as against the employers. The same relief having been sought against the employers, the same basis which the plaintiffs-appellants assert for the instant appeal, i.e., the alleged denial of injunctive relief, would have applied even more to the order as to the employers. Yet the plaintiffs filed no appeal. Since the employer-defendants as parties to the contracts would be indispensable parties even if, arguendo, there were jurisdiction below to entertain an action to enjoin the

contracts, it is clear that this appeal is moot. See discussion above, pages 2-3, paragraph 1, c, d, and e.

e. The Appeal And The Action Are Moot Because Any Decree Of The District Court Would Be An Advisory Decree.

The negotiation of the collective bargaining agreement was concluded and the collective bargaining agreements were executed before the filing of this suit. Since, as shown above, the district court has no jurisdiction to affect the contracts under Landrum-Griffin (and in view of the dismissal as against the employers), any ruling by the court as to the conduct of the defendants-appellees could only have relevance to future negotiations, which will not take place until 1965 when the present contracts expire. Thus, it would be actually an advisory decree. This Court has held that federal "Courts do not have power or jurisdiction to render purely advisory opinions . . ." *Harris* v. *Texas & Pacific Ry.* (1952), 196 F. 2d 88, 90. If the case has significance only because of an assumed potential invasion of alleged future rights, it is moot and should be dismissed. *Ashwander* v. *T.V.A.*, 297 U.S. 288, 324. This rule has been applied to suits under the Landrum-Griffin Act. *Colpo* v. *Highway Truck Drivers*, (3 Cir. 1962) 305 F. 2d 362, 45 L.C. paragraph 17, 712. It should be noted, moreover, that plaintiffs-appellants failed to set forth any injury to any personal rights; their alleged damages would be purely speculative, and they show no basis for actual damages. Therefore they show no entitlement to exemplary damages. *Geach* v. *Olson*, (7 Cir. 1954) 211 F. 2d 682.

CONCLUSION.

Congress did not confer, and clearly intended not to confer jurisdiction on the district courts under the

Landrum-Griffin Act to interfere with the excessive jurisdiction over collective bargaining contracts which is granted to the Labor Board (and to the courts under §301) under the Taft-Hartley Act. The maintenance of actions such as this under Landrum-Griffin would create intolerable unrest and uncertainty in labor relations. The Labor Board frequently certifies new bargaining agents to replace other unions, as occurred in this case when the defendant-appellee replaced the Teamsters Local 777. If a handful of dissident members were permitted to sue to enjoin or interfere with contracts negotiated by newly certified unions; or if a handful of members who thought their union should have held out for a higher settlement (as would always be the case) could sue under Landrum-Griffin to set aside the contract, there would be no end to uncertainty and instability in negotiations, and no employer could safely execute a contract with a union. This is precisely what is not intended by either the Landrum-Griffin or Taft-Hartley Acts. The instant suit is one which obviously seeks to distort the laudable protections of Title I, created to regulate purely internal union affairs, into a vehicle for disruption of sound collective bargaining relationships.

It is respectfully submitted that the appeal and the suit should be dismissed, there being no proper jurisdiction of the suit; the appeal having no proper statutory basis; and the appeal and the lawsuit being moot.

Respectfully submitted,

/s/ Irving M. Friedman
Irving M. Friedman
Arthur Brody
Attorneys for Defendants-Appellees

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago 10, Illinois
March 6, 1963

Before

Hon. John S. Hastings, Chief Judge
Hon. Win G. Knoch, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge

Roland Ryan, Gino Pollastrini and Sam Bruno, Plaintiffs-Appellants, vs. Dominic Abata, etc., et al., Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, *Eastern Division.*
No. 14053	

On consideration of the defendants-appellees' motion to dismiss, answer to motion to dismiss, reply, suggestions in support of motion to dismiss, and authorities referred to by both parties in support and opposition to the motion, together with examination of the documents on file in this Court.

It appearing that the order from which this appeal is taken is neither a final order nor an order refusing an injunction within the scope of Title 28, U. S. C., Section 1292(a)(1), and is not an appealable order,

It Is Ordered that the motion of defendants-appellees' to dismiss this appeal be granted, and that such appeal be and the same is now Dismissed.

IN THE UNITED STATES DISTRICT COURT

Friday, November 28, 1962
Present: Honorable Julius H. Miner,
District Judge

(Caption—No. 62 C 785)

This being the day to which this cause was continued for trial the parties come by their attorneys and the Court being fully advised in the premises it is

Ordered the following be and hereby is stricken from the complaint, in the prayer for relief thereof, paragraph (A) appearing on page 9, and paragraphs (B) and (C) appearing on page 10, and it is

Further Ordered that leave be and hereby is given to the plaintiff to amend the final unnumbered paragraph in the prayer for relief and to file an amended complaint relating thereto.

It Is Further Ordered that the motion of defendant Dominic Abata to strike paragraphs 9, 10 and 13 of the complaint be and it is hereby denied, and that this cause be and it hereby is continued to December 4, 1962 at 10 A.M. for trial, all witnesses being directed to return on December 4, 1962 at 10 A.M.